No. 18-266

In The
Supreme Court of the United States

THE DUTRA GROUP,

Petitioner,

v.

CHRISTOPHER BATTERTON,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF THE SAILORS' UNION OF THE PACIFIC AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

JOHN R. HILLSMAN
Counsel of Record
MCGUINN, HILLSMAN & PALEFSKY
535 Pacific Avenue, Suite 100
San Francisco, CA 94133
(415) 421-9292
jrhillsman@mhpsf.com

February 28, 2019

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	2
ARGUMENT	4
I. The members of a vessel's crew are entitled to "special solicitude" as "wards of the admiralty"	5
II. Because the Jones Act is a remedial statute, this Court should construe it to accomplish Congress's remedial purpose	9
III. This Court should follow the well-established preference in maritime law to grant a remedy to an injured claimant when no established and inflexible rule denies the remedy	11
CONCLUSION	15

TABLE OF AUTHORITIES

Page

CASES:

American Export Lines, Inc. v. Alvez, 446 U.S. 274 (1980) 4, 6, 7, 12, 13, 14

The Arizona v. Anelich, 298 U.S. 110 (1936) 6, 10, 11

Atlantic Sounding Co. v. Townsend, 557 U.S. 404 (2009) ..... *passim*

Calmar Steamship Corp. v. Taylor, 303 U.S. 525 (1938) 6

Chandris, Inc. v. Latsis, 515 U.S. 347 (1995) 5, 10

Harden v. Gordon, 11 F. Cas. 480 (C.C. Me. 1823) (No. 6,047) 5, 6

The Harrisburg, 119 U.S. 199 (1886) 12

McDermott International, Inc. v. Wilander, 498 U.S. 337 (1991) 10

McGuire v. The Golden Gate, 16 F. Cas. 141 (C.C.N.D. Cal. 1856) (No. 8,815) 1

Miles v. Apex Marine Corp., 498 U.S. 19 (1990) ..... *passim*

Miller v. American President Lines, Ltd., 989 F.2d 1450 (6th Cir. 1993) 9

Mobil Oil Corp. v. Higginbotham, 436 U.S. 618 (1978) 4, 13, 14

Moragne v. States Marine Lines, Inc., 398 U.S. 375 (1970) 7, 12-13

Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207 (1986) 13

TABLE OF AUTHORITIES – Continued

Page

Powers v. Bayliner Marine Corp., 855 F. Supp. 199 (W.D. Mich. 1994) 8, 9

Ramsay v. Allegre, 25 U.S. (12 Wheat.) 611 (1827) 6

The Sea Gull, 21 F. Cas. 909 (C.C.D. Md. 1865) (No. 12,578) 3, 4, 11, 12, 13, 14

Sea-Land Services, Inc. v. Gaudet, 414 U.S. 573 (1974) 12

Socony-Vacuum Oil Co. v. Smith, 305 U.S. 424 (1939) 10

Vaughan v. Atkinson, 369 U.S. 527 (1962) 6

Yamaha Motor Corp., U.S.A. v. Calhoun, 516 U.S. 199 (1996) 12

STATUTES AND RULE:

28 U.S.C. § 1257 13

Jones Act, 46 U.S.C. § 30104 ..... *passim*

Death on the High Seas Act (DOHSA) § 2, 46 U.S.C. § 30303 ..... 13, 14

Supreme Court Rule 37.6 1

OTHER AUTHORITIES:

TRISTRAM KORTEN, INTO THE STORM: TWO SHIPS, A DEADLY HURRICANE, AND AN EPIC BATTLE FOR SURVIVAL (2018) 2

David W. Robertson, *Punitive Damages in U.S. Maritime Law*: Miles, Baker, *and* Townsend, 70 LA. L. REV. 463 (2010) 6

INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Sailors' Union of the Pacific (SUP) was founded in 1891 by Andrew Furuseth, the "Emancipator of Seamen." It is headquartered in San Francisco, California, and maintains branch offices in Wilmington, California; Seattle, Washington; Honolulu, Hawaii; and Norfolk, Virginia. It represents licensed and unlicensed crewmembers serving in the deck, engine, and steward's departments of U.S.-flag merchant vessels.

SUP has been championing the rights and interests of crewmembers for over 125 years. It has an interest in urging this Court to reaffirm the right of its members and other crewmembers to seek all traditional remedies when they are injured, including punitive damages for a vessel owner's willful and wanton breach of the well-established duty to provide a seaworthy vessel.

The courts have long recognized that punitive damages "teach the tort feasor the necessity of reform." *McGuire v. The Golden Gate*, 16 F. Cas. 141, 143 (C.C.N.D. Cal. 1856) (No. 8,815). Unfortunately, that is a lesson that still bears repeating. SUP files this brief in large part because the recent loss of the *S.S. El Faro*[2]

---

[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* confirm that no counsel for a party authored this brief in whole or in part, and that no person or entity other than *amicus curiae* or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. The parties have granted blanket consent to the filing of *amicus* briefs.

[2] *El Faro* sank with all hands on October 1, 2015, during a routine voyage from Jacksonville, Florida, to San Juan, Puerto

serves as a sobering reminder that the need for such a deterrent is as pressing and enduring as the perils of the sea themselves.

This *amicus* brief seeks to assist the Court in deciding this case by further explaining and documenting three fundamental principles of general maritime law that petitioner and its supporting *amici* seek to avoid.

SUMMARY OF ARGUMENT

Three basic maritime-law principles counsel this Court to confirm the right of an injured crewmember to seek punitive damages in a general-maritime-law unseaworthiness action.

1. Almost two centuries ago, Justice Story declared that "seamen . . . are emphatically the wards of the admiralty." This Court has frequently recognized that principle, sometimes using the language that crewmembers are entitled to "special solicitude." Applying that principle, courts uphold the rights of injured crewmembers unless established law inevitably requires the contrary result. No established law bars

---

Rico, when she lost power near the eye of Hurricane Joaquin. Ample evidence suggests that the vessel was unseaworthy as a result of the owner's egregious misconduct. *See generally, e.g.*, TRISTRAM KORTEN, INTO THE STORM: TWO SHIPS, A DEADLY HURRICANE, AND AN EPIC BATTLE FOR SURVIVAL (2018).

respondent's entitlement to seek punitive damages here.

Some lower courts have mistakenly invoked *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), to deny injured crewmembers remedies that are generally available to other maritime litigants. But the "wards of the admiralty" should be the most-favored maritime litigants. At the very least, they should be entitled to pursue the same remedies that are generally available (in appropriate cases) to all other maritime litigants.

2. This Court has frequently recognized that the Jones Act, 46 U.S.C. § 30104, is a remedial statute that was designed to enlarge the protection that the law gives to members of a vessel's crew. It should therefore be construed liberally to accomplish its remedial purpose. If this Court chooses to hold that punitive damages are available in unseaworthiness actions regardless of whether they are available under the Jones Act, it should find (as it did in *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404 (2009)) that nothing in the Jones Act defeats the long-established right to seek punitive damages. Alternatively, if this Court addresses the availability of punitive damages under the Jones Act, it should construe the statute to preserve all of the common-law remedies (including punitive damages) that were previously available to injured railroad workers or crewmembers.

3. In *The Sea Gull*, 21 F. Cas. 909, 910 (C.C.D. Md. 1865) (No. 12,578), Chief Justice Chase explained that "it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold

the remedy, when not required to withhold it by established and inflexible rules." That "often-quoted" passage has been recognized as a "principle of maritime law" and "a settled canon of maritime jurisprudence." In *American Export Lines, Inc. v. Alvez*, 446 U.S. 274 (1980), the leading opinion used the *Sea Gull* principle to distinguish *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618 (1978), the principal authority on which the *Miles* Court later relied. This Court should apply the principle in similar fashion here to distinguish *Miles* and give respondent the punitive damages remedy that he seeks.

ARGUMENT

Basic principles of maritime law counsel this Court to uphold the rights of an injured crewmember to pursue all traditional remedies, including the right to seek punitive damages when the vessel owner has willfully and wantonly breached its duty under the general maritime law to furnish a seaworthy vessel. Three particularly relevant principles—which this Court has frequently recognized, endorsed, and applied—protect the rights of the members of a vessel's crew when they have been injured as a result of the wrongful acts of their employers and the owners of the vessels on which they serve.

I. The members of a vessel's crew are entitled to "special solicitude" as "wards of the admiralty."

The members of a vessel's crew, such as the members of *amicus curiae* SUP, "'are emphatically the wards of the admiralty' because they 'are by the peculiarity of their lives liable to sudden sickness from change of climate, exposure to perils, and exhausting labour.'" *Chandris, Inc. v. Latsis*, 515 U.S. 347, 354-55 (1995) (quoting *Harden v. Gordon*, 11 F. Cas. 480, 485, 483 (C.C. Me. 1823) (No. 6,047) (Story, J.)).

Justice Story, on circuit, first articulated the "wards of the admiralty" principle in U.S. maritime law almost two centuries ago. He explained:

> Every court should watch with jealousy an encroachment upon the rights of seamen. . . . But courts of maritime law have been in the constant habit of extending towards them a peculiar, protecting favor and guardianship. They are emphatically the wards of the admiralty; and though not technically incapable of entering into a valid contract, they are treated in the same manner, as courts of equity are accustomed to treat young heirs, dealing with their expectancies, wards with their guardians, and cestuis que trust with their trustees. . . . Such, as I understand it, is the general doctrine of admiralty jurisprudence on this subject; and I am very slow to doubt

> either the wisdom or policy, which has breathed so humane a principle into the system.

Harden v. Gordon, 11 F. Cas. at 485. *See also Ramsay v. Allegre*, 25 U.S. (12 Wheat.) 611, 620 (1827) (Johnson, J., concurring) (describing seamen as "emphatically the wards of the Admiralty").

Since Justice Story's classic articulation of the principle, this Court has described the members of a vessel's crew as "wards of the admiralty" (or some variation[3] on that phrase) in at least two dozen opinions. *See* David W. Robertson, *Punitive Damages in U.S. Maritime Law*: Miles, Baker, *and* Townsend, 70 LA. L. REV. 463, 479 n.107 (2010). Most recently, the *Townsend* Court noted that "this Court has consistently recognized that . . . 'seamen . . . are peculiarly the wards of admiralty.'" *Atlantic Sounding Co. v. Townsend*, 557 U.S. 404, 417 (2009) (quoting *The Arizona v. Anelich*, 298 U.S. 110, 123 (1936)).

In addition, this Court has often expressed the substantive concept embodied in the "wards of the admiralty" principle without using the classic phrase. In *American Export Lines, Inc. v. Alvez*, 446 U.S. 274 (1980), for example, the leading opinion explains substantially the same idea:

---

[3] In *Vaughan v. Atkinson*, 369 U.S. 527 (1962), for example, this Court explained that "[a]dmiralty courts have been liberal in interpreting th[e] duty [to provide maintenance and cure] 'for the benefit and protection of seamen who are its wards.'" *Id.* at 531-32 (quoting *Calmar Steamship Corp. v. Taylor*, 303 U.S. 525, 529 (1938)).

> Admiralty jurisprudence has always been inspirited with a "special solicitude for the welfare of those men who under[take] to venture upon hazardous and unpredictable sea voyages."

Id. at 285 (plurality opinion) (quoting *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 387 (1970)) (alteration in original). Neither the *Alvez* plurality nor the *Moragne* Court used the word "ward" to describe a member of a vessel's crew, but both invoked the "special solicitude" formulation to convey the same concept—that the courts should diligently protect crewmembers' rights, ruling against them only when established law inevitably requires that result.

Even *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990)—the principal authority on which petitioner's entire case rests—recognized "that admiralty courts have always shown a special solicitude for the welfare of seamen and their families." *Id.* at 36. To be sure, the *Miles* Court concluded that the principles favoring "the welfare of seamen and their families" were "insufficient" when the Court created a new right that maritime law had not previously recognized. *See id.* But the *Miles* Court was clear that it refused to provide the requested loss-of-society remedy only because it was bound by established doctrine precluding precisely that remedy in the wrongful-death context. Any attempt to read *Miles* as rejecting the "special solicitude" concept entirely would be "far too broad." *Townsend*, 557 U.S. at 419.

The established doctrine that was relevant in *Miles* precluded a loss-of-society remedy in the wrongful-death context. That doctrine does not apply to punitive damages or in the non-fatal personal-injury context. As a result, the "wards of the admiralty" principle supports respondent's claim to seek punitive damages here—just as that principle supported the *Townsend* Court's conclusion that the Jones Act does not bar a claim for punitive damages for the willful and wanton disregard of the maintenance-and-cure obligation. *See Townsend*, 557 U.S. at 417.

A number of lower courts (and a number of maritime employers or vessel owners that have been guilty of egregious misconduct) have mistakenly tried to "give greater pre-emptive effect to the [Jones] Act than is required by its text, *Miles*, or any of this Court's other decisions interpreting the statute." *Townsend*, 557 U.S. at 424-25. The result has often meant that the "wards of the admiralty" are denied a remedy that is available to other maritime plaintiffs. In *Powers v. Bayliner Marine Corp.*, 855 F. Supp. 199 (W.D. Mich. 1994), *aff'd on other grounds*, 83 F.3d 789 (6th Cir. 1996), for example, the court held that the personal representatives of passengers who died in a recreational-boating accident could seek non-pecuniary loss-of-society damages in their maritime action against the sailboat manufacturer. The district court recognized that *Miles* denied loss-of-society damages to seamen in unseaworthiness actions, but reasoned that *Miles* was "inapposite" because "none of the plaintiffs is a seaman or personal

representative of a seaman." *Id.* at 201.[4] That is without doubt not the kind of "special solicitude" that this Court intended in its frequent invocations of the principle. The wards of the admiralty should be the most-favored maritime litigants, not denied remedies on account of their status. At the very least, they should be entitled to pursue the same remedies that are generally available (in appropriate cases) to all other maritime litigants—and, indeed, available (in appropriate cases) to all other litigants under the common law. They should have access to the punitive-damages remedy that is generally available to other litigants.

II. Because the Jones Act is a remedial statute, this Court should construe it to accomplish Congress's remedial purpose.

This Court has frequently recognized that the Jones Act, 46 U.S.C. § 30104, is a remedial statute, intended to expand the remedies available to members of the crew of a vessel who are injured in the course of their employment. Most recently, the *Townsend* Court noted that "this Court has consistently recognized that the [Jones] Act 'was remedial, for the benefit and protection of seamen who are peculiarly the wards of

---

[4] The district court in *Powers* was also bound by circuit precedent extending *Miles* to punitive damages. *See Miller v. American President Lines, Ltd.*, 989 F.2d 1450 (6th Cir. 1993). The *Powers* court used similar reasoning to distinguish *Miller*, holding that the personal representatives of passengers could seek a remedy that the court could not have granted to seamen. *See Powers*, 855 F. Supp. at 202-03.

admiralty.'" 557 U.S. at 417 (quoting *The Arizona*, 298 U.S. at 123); *see also, e.g.*, *Chandris*, 515 U.S. at 358 (construing the statute to "further[] the Jones Act's remedial goals"); *McDermott International, Inc. v. Wilander*, 498 U.S. 337, 349 (1991) ("the Jones Act is a remedial statute"); *Socony-Vacuum Oil Co. v. Smith*, 305 U.S. 424, 430 (1939) (describing the Jones Act as "remedial legislation for the benefit and protection of seamen" that "has been liberally construed to attain that end").

This Court in *The Arizona* clearly described the implications of this second principle in a passage that the *Townsend* Court subsequently quoted (in part):

> The [Jones Act] was remedial, for the benefit and protection of seamen who are peculiarly the wards of admiralty. Its purpose was to enlarge that protection, not to narrow it. Its provisions . . . are to be liberally construed to attain that end. . . .

298 U.S. at 123 (citations omitted).

The principle that the Jones Act must be liberally construed to attain its remedial purpose is relevant in either of two distinct ways in this case. This Court may resolve the current case in substantially the same way that it resolved *Townsend*, holding that punitive damages are available in an unseaworthiness action (just as they are available in an action for the willful and wanton disregard of the maintenance-and-cure obligation) regardless of whether they are available under the Jones Act. *See* Pet. Br. 16-32. In that event, this

Court should invoke the remedial-statute principle to support the conclusion that nothing in the Jones Act deprives injured crewmembers of the remedies that were generally available prior to the Jones Act (just as it supported the same conclusion in *Townsend*, 557 U.S. at 417).

Alternatively, this Court may resolve the current case by ruling that punitive damages are available under the Jones Act, and thus no basis exists for barring punitive damages in an unseaworthiness action. *See* Pet. Br. 32-42; Injured Crewmembers Amicus Br. 4-31. In that event, this Court should invoke the remedial-statute provision to support the conclusion that all of the remedies available at common law to injured railway workers or injured crewmembers continue to be available under the Jones Act (because the purpose of the statute was "to enlarge th[e] protection [of seamen], not to narrow it," *The Arizona*, 298 U.S. at 123).

III. This Court should follow the well-established preference in maritime law to grant a remedy to an injured claimant when no established and inflexible rule denies the remedy.

Chief Justice Chase, on circuit, articulated the third particularly relevant principle for this case over a century and a half ago in *The Sea Gull*, 21 F. Cas. 909 (C.C.D. Md. 1865) (No. 12,578):

> [I]t better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not

> required to withhold it by established and inflexible rules.

21 F. Cas. at 910. The actual holding in *The Sea Gull*—permitting a wrongful-death action under the general maritime law—was temporarily overruled by *The Harrisburg*, 119 U.S. 199 (1886), which was itself overruled by *Moragne* in 1970. But courts have frequently invoked the broader principle favoring the granting of a remedy to an injured claimant when no established and inflexible rule denies the remedy. This Court quoted the relevant passage in both *The Harrisburg*, 119 U.S. at 206-07, and *Moragne*, 398 U.S. at 387. Quoting the relevant passage in *Sea-Land Services, Inc. v. Gaudet*, 414 U.S. 573 (1974), this Court described it as a "principle of maritime law." *Id.* at 583. *See also, e.g.*, *Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 213 (1996) (quoting *Moragne*, 398 U.S. at 387, which in turn quoted *The Sea Gull*, 21 F. Cas. at 910); *Miles*, 498 U.S. at 36 (same).[5]

In *Alvez*, the leading opinion described Chief Justice Chase's principle as "a settled canon of maritime jurisprudence."[6] 446 U.S. at 281 (quoting *Moragne*, 398

---

[5] The *Miles* Court found the *Sea Gull* principle "insufficient." An "established and inflexible rule" precluded the requested remedy. *See* 498 U.S. at 36. But the *Miles* Court did not question the principle itself; on the contrary, it quoted the *Moragne* Court's quotation of Chief Justice Chase with approval. *Id.* Any attempt to read *Miles* as rejecting the *Sea Gull* principle would be "far too broad." *Townsend*, 557 U.S. at 419.

[6] Justice Powell did not join *Alvez*'s four-justice plurality opinion because he adhered to his view that *Gaudet*, on which the plurality relied, "was decided wrongly." He nevertheless concurred

U.S. at 387, which in turn quoted *The Sea Gull*, 21 F. Cas. at 910). Moreover, it applied that "settled canon of maritime jurisprudence" to distinguish *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618 (1978), the principal authority on which the *Miles* Court later relied. The issue in *Alvez* was "whether general maritime law authorizes the wife of a harbor worker injured nonfatally aboard a vessel in state territorial waters to maintain an action for damages for the loss of her husband's society." *Alvez*, 446 U.S. at 276. The defendant argued that the claimed damages were unavailable because "no right to recover for loss of society due to maritime injury has been recognized by Congress under § 2 of the Death on the High Seas Act (DOHSA) [now codified at 46 U.S.C. § 30303]; see *Mobil Oil Corp. v. Higginbotham*, 436 U.S. 618, 620 (1978), or the Jones Act [now codified at 46 U.S.C. § 30104]." *Alvez*, 446 U.S. at 281. This Court rejected that argument. Applying the

---

in the *Alvez* judgment because he "recognize[d] the utility of *stare decisis* in cases of this kind." 446 U.S. at 286 (Powell, J., concurring in the judgment). In any event, Justice Powell clearly supported the *Sea Gull* principle. *See, e.g.*, *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 234 (1986) (Powell, J., concurring in part and dissenting in part) (quoting Chief Justice Chase's "often-quoted passage" with approval). And the *Alvez* dissenters did not disagree with the *Sea Gull* principle. They dissented because they thought that the state-court judgment below was not final, and accordingly felt that this Court lacked jurisdiction under 28 U.S.C. § 1257. *See* 446 U.S. at 286-90 (Marshall, J., dissenting). Justice Marshall clearly supported the *Sea Gull* principle. *See, e.g.*, *Higginbotham*, 436 U.S. at 629-30 (Marshall, J., dissenting) (quoting and following the *Sea Gull* principle).

Sea Gull "canon of maritime jurisprudence," the leading opinion explained:

> Plainly, neither statute embodies an "established and inflexible" rule here foreclosing recognition of a claim for loss of society by judicially crafted general maritime law.
>
> DOHSA comprehends relief for *fatal* injuries incurred on the *high seas*. . . . *Higginbotham* never intimated that the preclusive effect of DOHSA extends beyond the statute's ambit. . . .
>
> Nor do we read the Jones Act as sweeping aside general maritime law remedies.

Id. at 282. This Court should now apply the *Sea Gull* principle in similar fashion to distinguish *Miles* and give respondent the remedy that he seeks. Not only do *Townsend* and this Court's other precedents command that result, but affirming the judgment below "better becomes the humane and liberal character of proceedings in admiralty."

CONCLUSION

The judgment of the Ninth Circuit should be affirmed.

Respectfully submitted,

JOHN R. HILLSMAN
Counsel of Record
MCGUINN, HILLSMAN & PALEFSKY
535 Pacific Avenue, Suite 100
San Francisco, CA 94133
(415) 421-9292
jrhillsman@mhpsf.com

February 28, 2019